

Minutes of the December 10, 2004 meeting of the
Commission on Governmental Ethics and Election Practices
Held in the Commission's Meeting Room,
PUC Building, 242 State Street, Augusta, Maine

Present: Chair James Donnelly; Hon. Jean Ginn Marvin; Hon. Andrew Ketterer; Hon. Terrance J. MacTaggart. Staff: Executive Director Jonathan Wayne; Counsel Phyllis Gardiner.

At 9:11 a.m., Chair Donnelly convened the meeting. The Commission considered the following items:

Agenda Item #1 – Ratification of Minutes of October 6, 2004 Meeting

Dr. MacTaggart moved, Ms. Ginn Marvin seconded, and the members voted unanimously to accept the minutes of the October 6, 2004 meeting as drafted.

Agenda Item #2 – Proposed Legislation

The Commission director explained that the deadline for introducing an agency bill was the first Wednesday of December. After receiving authorization from the Commission members prior to the meeting, he submitted a bill to the Legislature which addressed questions that arose in the 2004 elections.

The director described the different provisions in the bill to the Commission members, and asked whether they approved of them. As background, the director mentioned that a few House candidates had failed to qualify for Maine Clean Election Act funding because the Commission did not count qualifying contributions received before the Declaration of Intent had been filed. Mr. Donnelly asked how many candidates were disqualified. The director said that about three candidates did not meet the requirements out of roughly 300 MCEA participants. Mr. Ketterer said he did not like the idea of rigidly enforcing the requirement when the policy basis for it was vague. Mr. Donnelly stated that he believed some flexibility would be helpful, and the Commission agreed to recommend that the Declaration of Intent could be filed within five business days of beginning to collect the \$5 qualifying contributions.

Moving to a different issue, the director said that there were a small number of candidates who had difficulty qualifying for Maine Clean Election Act funding because they did not turn in complete paperwork by the April 15 deadline. He proposed that the Commission could establish an informal "early check-in" deadline of April 1, which would give staff time to check the completeness of the submitted documents and to notify the candidates of missing documents. The Commission members expressed skepticism that many candidates would file by the early check-in deadline.

Chair Donnelly asked how many papers had to be filed with the Commission when an individual became a Maine Clean Election Act candidate. The director replied that six documents had to be filed. The Chair requested that the staff look into consolidating the forms in future elections.

The director raised the issue of leadership PACs. He indicated that there were several proposals being presented to the Legislature, and that he was unsure whether the Commission should come up with a proposal in its bill or leave it to the Legislature. The consensus of the Commission members was to let the Legislature work on the bills submitted by Legislators and to omit the issue from the Commission's bill.

The director proposed an amendment to the statutory provision that in the last 21 days before the election, a communication naming or depicting a candidate is presumed to be an independent expenditure. He recommended that the 21-day period be increased to a 30-day period and should additionally cover those races in which no Maine Clean Election Act candidate is running. The Commission members stated that the presumption should continue to cover only those races in which a Maine Clean Election Act candidate is involved, but agreed with the recommendation of increasing the period to 30 days. Chair Donnelly suggested that the Commission rules incorporate a formula for dividing the cost of a communication among the candidates involved, so that filers can determine whether more than \$100 was spent per candidate.

The director asked whether the Commission should propose a provision that recounts are excluded from the definition of campaign contribution and expenditure. Ms. Ginn Marvin agreed with the suggestion, and stated that she thought that parties should be paying for recounts, and that MCEA funds should not be used for recounts. Other Commission members expressed their agreement. Ms. Gardiner pointed out that the Commission can look at this issue in a future rule-making, and the Commission members agreed that the issue could be handled through a rule amendment.

The director said that the bill as written required candidates, lobbyists, and PACs to file their reports electronically. The director indicated that he felt some individuals would object to being required to file electronically. Ms. Ginn Marvin said she supported requiring everyone to file electronically, as there are plenty of places where people have access to computers and the Internet, including libraries. She pointed out that it would save the Commission money on data entry.

The director raised the topic of communications and activities that are excluded from the statutory definition of contribution and expenditure. He suggested that candidates should be allowed to pay for gas from their personal funds. The director next brought up the definition of a slate card. He stated that because of the deadline for agency bills, he had put into the bill language from the Washington State campaign finance law defining "slate card." The definition covered several different media, including broadcast, radio, cable, and print communications. The definition required that three candidates for different offices must be listed in the communication. The definition also required that the candidates be treated in substantially the same manner. The content

would be limited to: identifying the candidates, the office sought by the candidates, the office currently held by the candidates, the party affiliation of the candidates, and a brief statement about the candidates. Ms. Ginn Marvin said she would like to have a situation where people could bring items in for review and the Commission could review and decide beforehand whether the literature or advertisement met the criteria of a slate card. Chair Donnelly said he was against being too restrictive on which candidates had to be in the listing and the language used, because it would interfere with free speech by the parties.

The director said the staff had received many calls concerning local parties wanting to sponsor campaign events. In response, he had included in the bill an exclusion for costs paid for by party committees for campaign events at which three or more candidates are present. The Commission members approved the provision.

Agenda Item #3 – Complaint against First Citizens Bank of Caribou and Maine Economic Research Institute

The Commission director indicated that there was no action required by the Commission on this item, because the House Democratic Campaign Committee had withdrawn it.

Agenda Item #4 – Late Independent Expenditure Report by Citizens for Responsibility PAC

Mr. Donnelly excused himself from the Commission's consideration of this item due to a personal conflict.

The director stated that the Citizens for Responsibility PAC ran an advertisement in the Bangor Daily News promoting about twelve candidates. Under the presumption in effect during the 21 days before the election, the PAC was required to report the expenditure within 24 hours so that the Commission could pay matching funds to opposing candidates. The cost of the ad was about \$3,000 and this amounted to roughly \$250 per person. The PAC filed its independent expenditure report three days late, on Monday, November 1, the day before the election. The Ethics Commission called all opposing candidates that night to inform them they were entitled to matching funds. The director said that if the report had been filed on time, then these candidates would have been called three days earlier, and would have had a better opportunity to use the funds.

The director stated that under the statutory formula in the Election Law, the standard late filing penalty was \$302.85. He said a notice had been sent to Mr. Cushing, and that the PAC did not object to paying this penalty. After further consideration, the staff had decided to recommend that an additional penalty of \$750 be assessed under the Maine Clean Election Act, because it was important to demonstrate to all parties involved that the Commission will not condone the late filing of reports – especially if it delays matching funds.

Mr. Cushing said he appreciated the fact that the Commission was trying to send a message on this issue. He stated that a person wishing to pay for the advertisement approached him and asked how to pay for this ad. Mr. Cushing told the person to make the check out to the PAC, and Mr. Cushing arranged to have the ad in the Bangor Daily News. As a result, Mr. Cushing wrote the check to the Bangor Daily News on Thursday, October 28. He said attorney Daniel Billings called him on Saturday, October 30, and said that the ad was over the \$100 per person threshold for reporting. Once Mr. Cushing learned that he needed to file the independent expenditure report, he filed it and took responsibility for paying the late filing fee.

Mr. Ketterer asked Mr. Cushing if the ad had been run for the purpose of affecting the outcome of an election. Mr. Cushing said there had been multiple goals and he said some people who funded the ad may have hoped it would promote the outcome of the election. Mr. Ketterer asked if Mr. Cushing felt personally that the ad had been for the purpose of influencing the election. Mr. Cushing replied that he personally did not. Mr. Ketterer went on to say that the \$750 penalty was toward the light end of the penalty scale. Mr. Cushing said a \$750 penalty was a significant amount of money, and also noted that this was a first-time offense for his PAC.

Doug Clopp, representing the Maine Citizen Leadership Fund, said that Mr. Cushing's PAC was a caucus PAC and very sophisticated, that it should be fined, and that although \$750 was a small amount, he agreed with the staff recommendation. Mr. Cushing replied that his PAC was not a caucus PAC and that it was a regional PAC in Penobscot County formed by private citizens.

Ms. Ginn Marvin moved to adopt the staff recommendation, and Dr. MacTaggart seconded the motion. Ms. Ginn Marvin said that the director had made a good recommendation, and that Mr. Cushing should have known the rules. Mr. Ketterer said he would support the motion, and that while it was not ordinary for the Commission to assess an additional penalty beyond the late-filing penalty, this was an extraordinary set of circumstances because it was so close to the election. He also said that all persons required to file independent expenditure reports should be judged by the same standards. The motion passed unanimously, 3-0. (Mr. Donnelly did not take part in the Commission's consideration of this item.)

Agenda Item #5 – John O'Brien/Failure to Revoke Exemption Before Accepting a Contribution

The Commission director stated that if a candidate believes that he or she will not accept contributions or expenditures, the candidate may be exempt from the obligation of filing campaign finance reports if the candidate signs a sworn statement declaring that he or she will not accept contributions or make campaign expenditures. Under the Election Law, the candidate may revoke the exemption statement by submitting an amended registration form or other statement that the candidate intends to raise and spend campaign funds.

John O'Brien, a candidate for the Maine Senate in the 2004 elections, signed a sworn exemption statement. Relying on this statement, his opponent and the Ethics Commission believed that he was not intending to receive any contributions. Mr. O'Brien later made an in-kind contribution to his own campaign by purchasing signs from his personal funds. He did not file a revocation of the original exemption statement. The Commission director stated that the acceptance of the contribution without first filing a revocation of the exemption statement was a violation, and he believed that the public and Mr. O'Brien's opponent were misled. Based on the formula in the statute, the director recommended a penalty of \$181.50.

Mr. Ketterer moved, Ms. Ginn Marvin seconded, and the Commission voted unanimously (4-0) to adopt the staff recommendation and to impose a civil penalty of \$181.50.

Agenda Item #6 – Gary Knight/Failure to Revoke Exemption Before Accepting a Contribution; Late Filing of October 27 Report

The Commission director presented background information on two possible violations involving House candidate Gary Knight. He filed a sworn statement declaring that he was not going to accept contributions or make expenditures. According to Mr. Knight's campaign finance reports, he received a contribution of \$100 from a PAC on September 4, and 10 days later he filed an amended registration statement which was intended to revoke his exemption. This appeared to be a violation because he accepted a contribution before revoking his exemption statement.

In addition, the campaign filed the wrong campaign finance report on the October 27 deadline. The filed report showed only the total amounts raised and spent for the general election. The proper report with full itemization of contributions and expenditures was filed three days late. The staff recommended assessing the statutory penalty of \$471.99 for the late filing of the October 27 report.

Gary Knight said that with regards to the first violation, upon further review of his campaign records it appeared that the campaign had misreported the date of the contribution he received. He said his campaign did not deposit or expend any money until October 14th. With regards to the second violation (the late filing of the October 27 report), he said that he thought the detailed report didn't need to be filed until the end of the campaign and on October 27 he only had to file a summary report. Mr. Knight said that once the Commission's office informed his campaign that the incorrect report had been filed, it filled out the proper form and faxed to the Commission's office by 11:20 PM on that day. Mr. Knight felt that the penalty amount for the late filing should be based on a percentage of 1% (rather than the initial staff recommendation of 3%) because of no previous violations for late filing.

The Hon. Linda McKee took the floor. She said she saw signs going up advocating for Mr. Knight after Mr. Knight said he wasn't going to accept contributions,

and this had been a cause for concern in the district. She felt that Mr. Knight had a good record but she also felt Mr. Knight should have been well acquainted with the rules.

Clayton Wagner, Mr. Knight's treasurer, took the floor. He said that the proper forms had not been received from the Commission and if they had been received the forms would have been filed properly. The director said it was the candidate's responsibility to obtain, complete, and file the correct forms on time. He said the forms were available on the Commission's Web site and by calling the office. Mr. Ketterer said that he would not hold the staff or the Commission responsible for the late filing.

The director said that the staff would withdraw the recommended penalty for the late revocation, and recommended that the penalty for the late filing violation should be calculated at 1%.

Mr. Donnelly stated that the campaign had the obligation to file on time and that the staff was correct on late filing issues almost all the time. He indicated that the penalty ought to be \$4,225 multiplied by 1% multiplied by 3 (the number of days late), which would come out to \$126.75. There would be a finding of a violation as well as a penalty, and Mr. Knight would not be treated differently than another candidate in a similar situation. Mr. Donnelly moved, Dr. MacTaggart seconded, and the Commission voted unanimously (4-0) to find Mr. Knight in violation for the late filing of the October 27 report and to assess a penalty of \$126.75.

Agenda Item #7 – Late Party Committee Report/Lincoln County Democratic Committee

This matter was tabled until a later meeting so that the party committee's treasurer could be present.

Agenda Item #8 – Late Party Committee Report/Maine Motorcyclist PAC

The Commission director stated that the October 27th report was 13 days late, and the statutory penalty was \$259.92. He recommended a 50% reduction because the PAC had changed treasurers, and the new treasurer seemed very responsive. Mr. Ketterer moved and Dr. MacTaggart seconded, to adopt the staff recommendation of a penalty of \$129.96. During discussion, Ms. Ginn Marvin commented the penalty should be the full statutory amount. The Commission voted 3-1 (Ms. Ginn Marvin dissenting) to adopt the staff recommendation.

Agenda Item #9 – Douglas Newman/Missing "Paid for" Disclosure on Campaign Communications

The Commission director said a card sent out by Senate candidate Douglas Newman had omitted the disclosure that the candidate paid for and authorized the literature. He recommended that Mr. Newman be found in violation, but that no penalty should be assessed. Dr. MacTaggart moved, and Mr. Ketterer seconded, to adopt the

staff recommendation. The Commission voted 3-1 (Ms. Ginn Marvin dissenting) to adopt the staff recommendation.

Agenda Item # 10 – Hon. Joanne Twomey/Missing “Paid for” Disclosure on Campaign

The Commission director said that roughly 100 brochures were printed by Representative Joanne Twomey without the “paid for” disclosure. Rep. Twomey discarded the brochures when the mistake was brought to her attention. He recommended that Rep. Twomey be found in violation, but not to assess a penalty. Mr. Ketterer moved, Dr. MacTaggart seconded, and the Commission voted unanimously (4-0) to adopt the staff recommendation

Agenda Item #11 – David Kubiak/Expenditures on Electronic Equipment and Advertising

The director stated that Mr. Kubiak was a Green candidate for the Maine Senate. He had reported expenditures for an expensive DVD projection unit and had paid money to a family member for office space. The director stated that he wished to request information from the candidate to verify that all MCEA funds were spent on for campaign-related purposes. Mr. Wayne said that Mr. Kubiak was obligated to sell that equipment at fair market value and the money earned from that sale would come back to the state. The Commission members authorized the director to contact the candidate and request information.

Agenda Item #12 – Request Regarding 2002 Report by People for a Strong Maine Economy

The Commission director said this item related to a December 17, 2002 report filed by the People for a Strong Maine Economy PAC. On Schedule B of the report, the PAC indicated that it paid \$80 to 108 Election Day workers and that a spreadsheet had been attached listing the workers. The spreadsheet was not submitted to the Commission. The Commission was requesting that the PAC come forward with the individual names of those workers.

Richard Pelletier, former treasurer for the People for a Strong Maine Economy, reported that it was his fault that the PAC did not do a complete report concerning this issue, and said he had been trying to put the report together. His bank was researching to find the account and tax identification numbers in question and once that was found, the bank be able to make copies of the cancelled checks for Mr. Pelletier. He hoped to be able to provide that information within the next couple of weeks.

Mr. Donnelly pointed out that the Commission has subpoena power and if the bank did not cooperate, and the Commission would help get the matter resolved by issuing a subpoena.

There being no further business, the Commission adjourned.

Dated: May , 2005

Respectfully submitted,

Jonathan Wayne
Executive Director